

Hello! My name is Judy Lefebvre. I am the outgoing Calendar Clerk for the Portland office, as I will be retiring as of November 3, 2000. I have thoroughly enjoyed talking to you over the years, helping you with clerical questions and setting hearings.

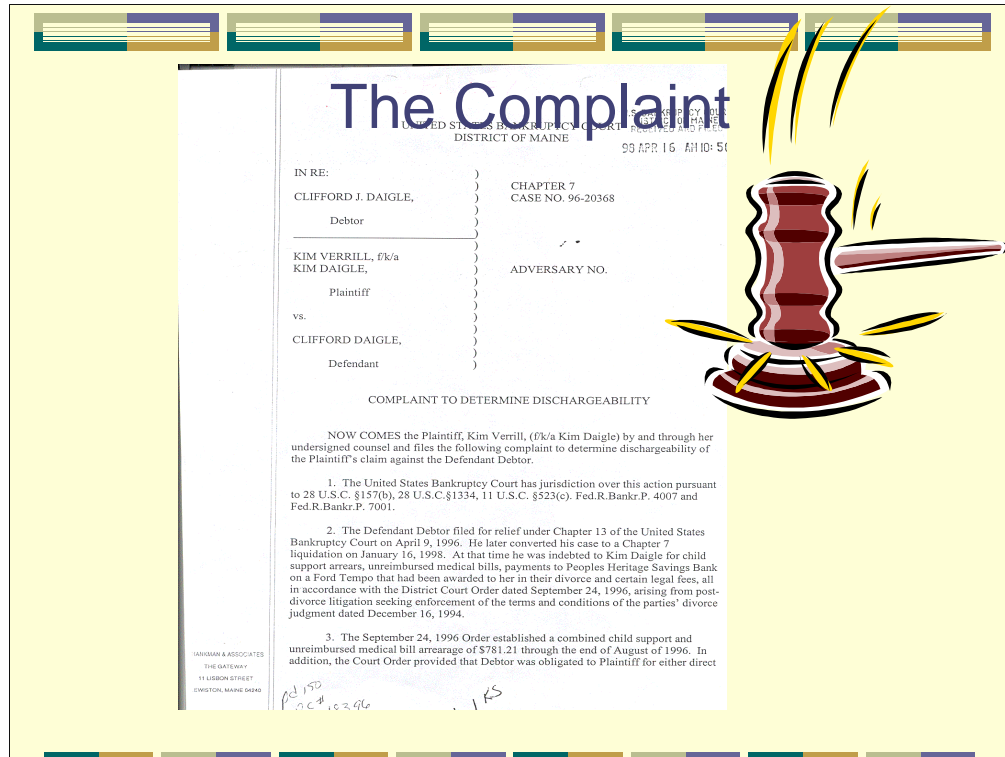
It is my pleasure to tell you a little bit about adversary proceedings. This may sound repetitious to some of you if you were here at our last presentation as there haven't been many changes, but – some things need to be reinforced!



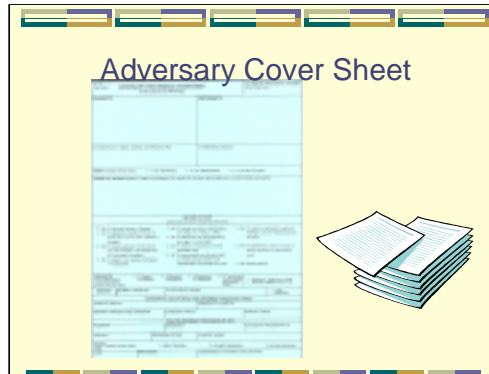
What is an Adversary?

- Method for litigating issues in bankruptcy
- Governed by rule 7001
- Initiated by filing a complaint
- Usually requires a fee

Most of you know that an adversary proceeding is a method by which certain discrete issues are litigated in a bankruptcy case. Adversary proceedings are governed by F.R. Bankr. P. 7001. This is done by the filing of a complaint, which is a formal written statement in which a party bringing an action states a claim and demands the relief to which the party believes it is entitled. This filing initiates an adversary proceeding which generally requires the payment of a filing fee. I will discuss filing fees later on.



The first step in commencing an adversary proceeding is the filing of a complaint. The complaint must be filed with the clerk in the district in which the bankruptcy case is pending. (This means the District of Maine). The format for a complaint is governed by the Fed. R. Bankr.P. 7010. and Fed. R. Civ. P.10. The caption must conform substantially to Official Form 16C Fed. R.Bankr. P. 7010, and include both the number assigned to the bankruptcy case and a space for the separate number to be assigned to the adversary proceeding.



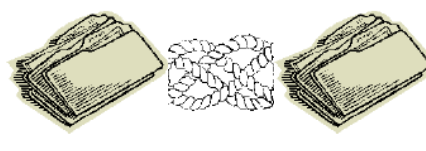
The complaint should be accompanied by a properly completed adversary cover sheet. These are available from the Clerk's Office. A blue cover sheet is included in your packet which can be photocopied for your use on white paper. It isn't necessary to use blue paper.

The bankruptcy rules governing adversary proceedings correlate generally to the Federal Rules of Civil Procedure. See, for example, F.R. Bankr.P. 7012, which is similar to F.R.C.P. 12.

Filing an Adversary



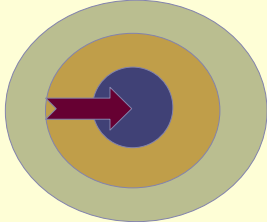
- Separate case number
- Tied to the main case



When you file an adversary proceeding it will be assigned a separate case number which must be used in conjunction with the bankruptcy case number **and I stress that it is very important that you have the correct case number on your pleadings when you file** because when a case administrator enters the adversary case in the computer it automatically is **-2** tied to the main case. An incorrect number can totally “screw up the works” so to speak. Adversaries are assigned numbers beginning with 00 which signifies the year followed by 4 digits - i.e. 2001 for Portland or 1001 for Bangor. Adversary proceedings are kept separate from main case files and all docket entries are made only in these proceedings. Some of the substantive requirements relating to preparing complaints are contained in F.R. Bankr. P. 7007(a), 7008, 7009, 7010, and 7011.

Common Confusion!

<p style="text-align: center;"><u>Objection to Discharge - §727</u></p> <ul style="list-style-type: none"> • Entire discharge • Possible reasons - could be: <ul style="list-style-type: none"> • fraud • concealed property • false oath • false claim • refusal to obey law • others 	<p style="text-align: center;"><u>Determination of Dischargeability - §523</u></p> <ul style="list-style-type: none"> • Refers to a particular debt, NOT all debts
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There are two different types of complaints that seem to cause confusion. These are complaints objecting to or to revoke a discharge and complaints to determine the dischargeability of a debt or debts. Complaints objecting to a debtor's discharge simply means that a person does not want the debtor to get a discharge for a particular reason. Usually this is because the debtor has defrauded a creditor, concealed property of the estate, made a false oath, presented or used a false claim, refused to obey any lawful order of the court and other reasons contained in the Bankruptcy Code.

On the other hand, complaints to determine dischargeability are complaints where a creditor wants his/her or their particular debt excepted from the discharge. This means that if the debt is determined non-dischargeable the debtor is still obligated to the creditor.

Another thing...



- The Clerk can't refuse to accept a paper only because it is not in proper form.

The Clerk can not refuse to accept a paper only because it is not in proper form. This issue may be raised by the parties to the proceeding or by the judge. Even though a paper is accepted for filing and is not in proper form, the relief requested may be denied later after determination by the judge.



Amending the Complaint

- May be amended once as a matter of course
- Additional amendments only upon leave of Court or by written consent of the adverse parties

A complaint may be amended **once** as a matter of course at any time before a responsive pleading is served, but any other amendments may be made only upon leave of court or by written consent of the adverse party.

Filing fee is \$150


- What are the exceptions?



A filing fee is to be collected by the Clerk upon the filing of a complaint. This fee is \$150.00. Filing fees are listed on our web site.



Most common exceptions:

- Plaintiff is the U.S.T. acting as trustee
 - Plaintiff is the Debtor
 - Plaintiff is the Trustee or debtor-in-possession and no funds available in the estate
 - Plaintiff is child support creditor or representative and files form required by section 304(g) of the Bankruptcy Reform Act of 1994
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However, there are exceptions to this fee requirement.
Some of the most common exceptions are:

- 1) When the United States trustee acting as a trustee Is the Plaintiff
- 2) The Debtor is the Plaintiff
- 3) When the Trustee or debtor in possession is the Plaintiff the fee is payable only if there are funds available in the estate. (and yes,)
- 4) Also, if a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by section 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

But be aware!

- No quantity discounts at the Bankruptcy Court
- It's \$150 for each Adversary filed



You should be aware that if you file a large number of proceedings in a single case there is no provision for discounting or waiving the fee. In other words, if you file 7 adversary proceedings in one case you must pay the \$150.00 fee for each adversary.

UNITED STATES BANKRUPTCY COURT
District of Maine

The Summons

Plaintiff
v.
Defendant

* SUMMONS AND NOTICE OF PRETRIAL CONFERENCE
IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to attend a pretrial conference in the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its officers and agencies shall obtain a written waiver to the complaint within 10 days.

Address of Clerk: Celia E. Swinkle, Clerk
U.S. Bankruptcy Court
217 Congress Street
Portland, ME 04101-3518

At the same time, you must also serve a copy of the summons or answer upon the plaintiff's attorney:

Name and Address of Plaintiff's Attorney: _____

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

YOU ARE NOTIFIED that a telephonic pretrial conference of the proceeding commenced by the filing of the complaint will be held on: The telephonic conference shall be initiated by the Plaintiff in conference with MRS. SWIN. When all parties are on the line, call the Court at 207-786-3673 at the scheduled pretrial date.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTER ON A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDS IN THE COMPLAINT. ANY AND ALL RESPONSES FILED PRIOR TO OR AT THE SAME TIME AS THE PRETRIAL CONFERENCE WILL BE READ AND Laid UP ON RECORD PROMPTLY WITH THE PRETRIAL CONFERENCE.

Celia E. Swinkle
Clerk of the Bankruptcy Court

August 20, 2020 By _____
Date Deputy Clerk

*Use version one (Vol. 8, Bank. P. 70040)

After docketing the adversary complaint the case administrator obtains a telephonic pretrial date from the calendar clerk and issues a summons. The summons is a formal command from the court which accompanies the complaint and notifies the defendant or defendants of the names of the parties, the court in which the adversary proceeding has been filed, and that a response is required within a certain time. The preassigned initial pretrial hearing date assumes that the summons will be timely served. The summons also sets a time and place for a pretrial conference.

Service of the Summons

- Copies mailed
- Attorney serves within 10 days
- Check the rules!



Upon completion of the summons the case administrator makes sufficient copies for service and mails them to the attorney for the plaintiff. It is the attorney's responsibility to promptly serve the summons and a copy of the complaint on the defendant(s) within 10 days of the date of issuance. If service is not made within 10 days, a new summons must be issued and served. Service of a summons and a complaint in a bankruptcy adversary proceeding is different from service in state or federal court because the rules allow it to be done by regular mail in addition to personal service, residence service, and publication. I suggest you refer to the Federal, Civil and Local Rules for more information.

Certificate of Service

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on and as of the time of mailing service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made, I further certify that the service of this summons and a copy of the complaint was made on _____ by: _____ (date)

☒ Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

Barry Schklair, Esq.
537 Congress St.
Portland, ME 04101

☐ Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Publication: The defendant was served as follows: (Describe briefly)

☐ State Law: The defendant was served pursuant to the laws of the State of _____ (name of state) as follows: (Describe briefly)

Under penalty of perjury, I declare that the foregoing is true and correct.

Date April 21, 1998

Signature

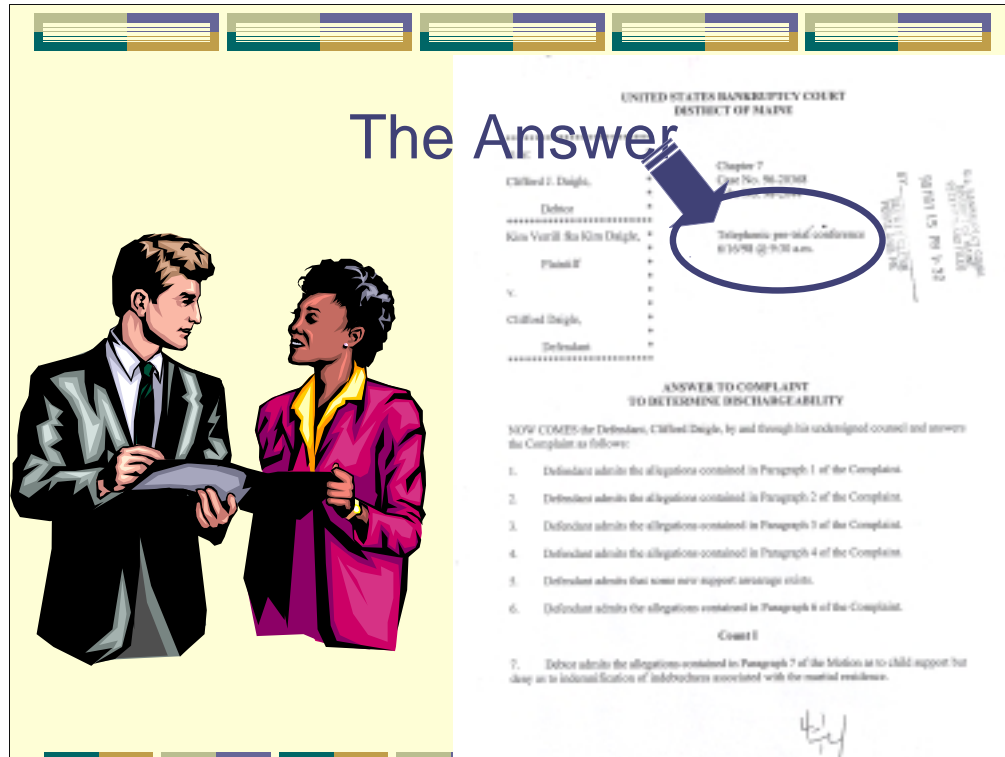
FILED
CLERK OF DISTRICT COURT
DISTRICT OF MAINE
PORTLAND, ME
APR 22 1998

3-1

File Name
Neil S. Shanley, Esq.
Reside Attn:
11 Trishon St.
City State Zip
Portland, ME 04240



At the time you make service you should complete the reverse side of the summons “Certificate of Service,” and return it to the court for processing. Service is complete upon mailing and not upon delivery. If service is by a U.S. Marshal or deputy U.S. Marshal they will file a certificate of service.



The next step is for the Defendant to file an answer or other responsive pleading. All responsive pleadings should have the date and time of the hearing in the upper right hand corner. This alerts the case administrator that the pleading should be docketed and filed promptly so the case will be in order for the pretrial.

There are several other actions that happen within an adversary proceeding that I don't believe need to be addressed as this workshop is simply to give you an overview of the different matters and how to handle them on a clerical level.



Most Common Problems

1. Wrong main case #
2. Title does not match action
3. Cover sheet missing
4. Cover sheet does not match pleading
5. Incorrect or missing filing fee
6. Non-return of certificate of service
7. Certificate filled out wrong
8. Answer missing date and time of hearing in upper right-hand corner

Some of the problems we encounter with adversary proceedings are:

1. Incorrect main case numbers. As I mentioned before VERY IMPORTANT. Make sure main case number is correct.

2. Title does not reflect what the action is i.e. Objection to Discharge when in fact the pleading is a complaint to determine dischargeability of a debt.

3. Cover sheet not filed with complaint.

4. Cover sheet filled out but does not correspond to pleading.

For example, Cover Sheet box checked for Obj. To discharge when complaint is actually a complaint to determine dischargeability.

5. Incorrect amount of filing fee or no filing fee at all. Filing fee is \$150.00

6. Non return of certificate of service. As soon as you mail the summons and complaint fill out the certificate of service and send it back to us.

7. Certificate of service filled out incorrectly. Some will say just the name of the party served, others will just have a date of service and no names. It should state the name and address of the parties served as well as the method of service. The certificate of service may be signed by the secretary, paralegal or the attorney.

8. When answers or other pleadings are filed they do not have the date and time of the hearing in the upper right hand corner as required by the Local Rules.

This is VERY IMPORTANT and is frequently left off a pleading.



This is a very general overview of adversary proceedings and some of the problems we encounter.. If you have any questions please jot them down and we will try to answer them during the question and answer period.

Next, I'd like to introduce Pam Levere, who will talk to you about reaffirmations and amendments.